FILED
MAR 11 1971
E. ROBERT SEAVER, CLERK

LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, ET AL.,
Petitioners,

v.

WILLIAM S. RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF THE STATE OF WEST VIRGINIA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF STATE RESPONDENTS

STANLEY E. PREISER
L. ALVIN HUNT
1012 Kanawha Blvd., E.
P. O. Box 2506
Charleston, W. Va. 25329
Attorneys for State Respondents

PREISER, GREENE, HUNT & WILSON
Of Counsel

INDEX

	Page
Introduction	1
Questions Presented	3
Statement of the Case	4
Argument	10
I. The Displacement of the Black Petitioners Into a Racially Discriminatory Housing Market Without Adequate Governmental Measures to Assure Non-Discriminatory Relocation Housing Deprives Them of the Equal Protection of the Laws Guaranteed by the Fourteenth Amendment	10
II. The 1968 Relocation Amendments to the Federal-Aid Highway Act and Regulations Thereunder Grant Relocation Benefits to the Triangle Residents Which Have Not Yet Been Administratively or Judicially Accorded Them	12
A. The 1968 Relocation Amendments Assure Persons Not Yet Displaced as of the Date of Enactment the Right to Adequate Replacement Housing, and Pursuant Thereto Mandate Detailed Relocation Plans	12
B. In the Absence of Compliance with the Requirements of the 1968 Relocation Amendments, Administrative Action by State and Federal Officials Cannot be Upheld on the Basis of General Assurances That Efforts Are Being and Will Be Made to Relocate Persons Displaced, and That Adequate Relocation Housing Exists	20

1. Reversal Is Required Because the Procedures Mandated by Law with Respect to the Submission for Review and Approval of a Comprehensive Relocation Plan Were Not Followed 21

2. The District Court's Purported Finding That Relocation Housing Was Adequate Was Clearly Erroneous 21

III. The Questions of Retroactive Application and Appropriate Remedy 22

Conclusion 23

TABLE OF AUTHORITIES

Cases: Page

Triangle Improvement Council v. Ritchie, 314 F. Supp. 20 (S.D. W.Va. 1969) 12

Triangle Improvement Council v. Ritchie, 429 F. 2d 423 (4th Cir. 1970) 17, 18

Udall v. Tallman, 380 U.S. 1 (1965) 15

Statutes and Regulations:

1. *Statutes.*

Charleston Human Rights Act, Code City of Charleston (Nov., 1967) 10, 11

Federal-Aid Highway Act, 23 U.S.C. §128 4

Federal-Aid Highway Act of 1956, 23 U.S.C. §133 ..... 6, 7

Federal-Aid Highway Act of 1968, 23 U.S.C. §501, *et seq.* ..... *Passim*

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894 2

West Virginia Code, Ch. 17, Art. 2A, Sec. 1 1

2. *Court Rules.*

Rule 25(d) (1), F.R.C.P. 1

Rule 40(3) Supreme Court Rules 4

3. *Regulations, Directives, and Memorandums of Department of Transportation.*

Circular Memorandum, December 26, 1968 ... 16

Circular Memorandum, February 12, 1969 ... 16, 17

Circular Memorandum, March 27, 1970, as amended April 10, 1970 ... 18, 19

Instructional Memorandum 80-1-68, September 5, 1968, as amended ... *Passim*

Memorandum on Implementation of Replacement Housing Policy by Secretary of Transportation, John A. Volpe, January 15, 1970 ... 18, 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, ET AL.,
Petitioners,

v.

WILLIAM S. RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF THE STATE OF WEST VIRGINIA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF STATE RESPONDENTS

INTRODUCTION

State Respondents[1] herein, is the vehicle through which the various and sundry mechanics for the re-

[1] For purposes of brevity and clarification, the Respondents, William S. Ritchie, Jr., Commissioner, etc., and O. R. Colan, Director, etc., will hereinafter be referred to as State Respondents. At the inception of subject litigation in December, 1968, M. R. Hamill was Commissioner, State Road Commission of West Virginia, and was replaced by said William S. Ritchie, Jr., and the District Court (A. 36a) substituted Mr. Ritchie as a named defendant pursuant to Rule 25(d) (1), F.R.C.P. Since the time of the opinion of the District Court, Mr. James E. Bailey has replaced Mr. O. R. Colan as Director of Right of Way Division, and the State Road Commission of West Virginia has been renamed by statute (Code 17-2A-1) as West Virginia Department of Highways, and its Chief Executive Officer, the West Virginia Commissioner of Highways.

location of individuals, individual families, businesses, farm operations and non-profit organizations displaced by federally-aided highway location and/or construction are carried out, in the Triangle area of the City of Charleston, as well as throughout the entire State of West Virginia in any area in which highway construction is being pursued.

This relocation of displacees is pursuant to the provisions of federal statutes administered by federal agencies. State Respondents, in order to obtain reimbursement for the expense of relocation assistance to displacees, supplemental rental allowances, etc., from the federal government must and have complied with all provisions, regulations, requirements and directives of the federal agencies in regard to relocation of displacees. Morover, pursuant to the applicable federal statutes, and the rules, regulations and directives promulgated thereunder[2], the State Respondents must, and have complied[3] with all relocation procedures and requirements affecting displacees in order to qualify for federal aid for other phases of the highway construction program.

To the Federal Respondents is delegated the responsibility of initially construing the requirements of the statutes, promulgating rules and regulations to carry the provisions of the statute into effect, and imposing sanctions in the event of non-compliance there-

[2] See Pet. Br. p. 3 for the statutes, regulations and policy directives involved; also Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, January 2, 1971, 84 Stat. 1894.

[3] Compliance, at least, to the satisfaction of the federal agencies administering the relocation provisions of the various statutes and regulations.

with by the State agency. The State Respondents have and will continue to comply with each and every statute, regulation, directive and procedure affecting relocation and displacement of persons or businesses as required by applicable federal statutes, responsible federal agencies or this Court.

However, State Respondents believe that the construction placed upon the Federal Aid Highway Act of 1968, 23 U.S.C. §501., *et seq.* in regard to displacement and relocation and the memorandums and directives issued pursuant thereto and in furtherance thereof by the Federal Respondents, as carried out by the State Respondents (and which construction and performance was affirmed by the District Court and the Fourth Circuit Court of Appeals), is a proper, valid, legal and logical construction and application thereof in regard to the two federally-aided highway projects with which we are here concerned and the individuals, families, businesses and organizations affected thereby.

QUESTIONS PRESENTED

State Respondents are in accord with Petitioners' general categorization of the questions presented for consideration herein, but take issue with some of the alleged factual statements inserted therein under the guise of "Questions Presented," as follows:

1. All of the Petitioners in subject litigation have not and will not be displaced by the interstate highway in question.

2. Also considered clearly erroneous by State Respondents are the numerous allegedly factual state-

ments (without reference to the authority or basis for such) that the housing market in the City of Charleston is racially discriminatory and that the persons displaced in the Triangle area are thereby excluded from obtaining replacement housing.

3. State Respondents further take serious issue with Petitioners' assertions that State Respondents refused to provide assurances of relocation housing prior to displacement of any person by highway construction.

STATEMENT OF THE CASE

Although cognizant of the provisions of Rule 40(3) Supreme Court Rules that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side, it is considered more expedient to include a narrative statement of the case rather than to detail the inaccuracies and omissions contended by State Respondents to exist in Petitioners' statement.

After public hearings held in Charleston, West Virginia, on March 29, 1960, and June 10, 1964, pursuant to the applicable provisions of the Federal-Aid Highway Act, 23 U.S.C. § 128, the Bureau of Public Roads on August 31, 1964, approved the routing of combined Interstate 64 and Interstate 77 through the City of Charleston, West Virginia, which approved routing bisected the area of Charleston commonly referred to as the "Triangle".

According to the complaint filed in this proceeding by Triangle Improvement Council, the Triangle is bounded generally as follows: On the north by

Dryden Street, on the east by Capitol Street, on the south by Washington Street and on the west by Elk River (A. 10a). Interstate 64 (hereinafter referred to as I-64) is a generally east/west highway and Interstate 77 (hereinafter referred to as I-77) is a generally north/south highway. These two highways, together with Interstate 79, also a north/south highway, converge on the westerly side of Elk River opposite the Triangle area and I-64 and I-77 jointly cross the Elk River in a generally easterly direction into the Triangle area and continue eastwardly through the same (Pl. Ex. 1; A. 137a). Two separate projects affect the Triangle and have been designated Project A and Project B (A. 142a). Project A is approximately 2.9 miles long and begins at the interchange where I-77 and I-79 connect, proceeds down Elk River in a southerly direction to connect with I-64 at Glenn Street, then crossing Elk River through the Triangle to Young Street. Project B begins at Young Street in the Triangle and proceeds in a generally easterly direction to Jefferson Street, approximately 1.9 miles[4] (Volpe's Ex. 4; A. 208a and 275a).

The Bureau of Public Roads first authorized the State Road Commission to acquire right of way on Project A on April 19, 1966, and on Project B on November 30, 1966 (A. 192a). On Project A, there were approximately 1,293 persons to be relocated and on Project B there were approximately 897, or a total of 2,190. By February 28, 1969, approximately 913 of these persons had been relocated on Project A, and approximately 401 on Project B, or a total of

[4] The breaking point between the two projects will probably be Court Street which is one block east of Young Street (A. 209a).

1,314 persons. There remained to be relocated on Project A, approximately 380 persons and on Project B, approximately 496 persons, or a total of 876 (A. 213a and 214a). In the Triangle area there remained to be relocated as of February 28, 1969, approximately 116 individuals and 55 families of two or more persons. The total number of persons to be relocated was 284 (A. 148a and 149a) (A. 193a, 194a and 195a).

During the interim period from April 19, 1966, when right of way acquisition was first authorized by the Bureau of Public Roads until April 1, 1969, the day before hearings were begun in the District Court on the subject case, numerous parcels of real estate were acquired by the State Road Commission (Pl. Ex. 4; A. 147a; Ritchie Ex. 5 and 6; A. 383a).

Prior to August 23, 1968, the effective date of the 1968 relocation amendments to the Federal-Aid Highway Act, 23 U.S.C. §501, *et seq.*, the State Road Commission of West Virginia was far exceeding the requirements in regard to relocation assistance provided by the 1962 relocation assistance amendment to the Federal-Aid Highway Act of 1956, 23 U.S.C. §133, which became effective October 23, 1962.[5]

---

[5] Paraphrasing the testimony of Gerald B. Saunders, Division Right of Way Officer, Bureau of Public Roads, Department of Transportation (A. 178a-182a, 209a-211a), 512 relocations on about 50 projects had been reviewed. Approximately 125 of these reviews were within the projects concerned herein and were under the requirements of the 1962 relocation advisory assistance amendments to the Federal-Aid Highway Act of 1956 (23 U.S.C. §133). Saunders was satisfied that the State Road Commission was providing all the relocation assistance required and *probably then some* if compared nationwide. (Emphasis Supplied)

For detailed narrative of the activity by the State Road Commission in relocation assistance, see A. 370a, 372a.

Upon passage of the 1968 relocation amendments to the Federal-Aid Highway Act of 1956, 23 U.S.C. §501, *et seq.*, the Bureau of Public Roads, Federal Highway Administration, U. S. Department of Transportation issued a series of Instructional Memorandums, Policy and Procedure Memorandums, and Circular Memorandums to cover the administration of the Highway Relocation Assistance Program created by the 1968 amendment, 23 U.S.C. §501, *et seq.* (Pl. Ex. 2 and 3; A. 139a).

Based upon the language of the statute, the various memorandums interpreting and supplementing the same, the officials of the Bureau of Public Roads concluded that, with the exception of relocation payments, the provisions of the Highway Relocation Assistance Program were not applicable to the two projects which affected the Triangle area.

Therefore, no assurances as mentioned in the statute (23 U.S.C. §502) and in the I.M. (I.M. 80-1-68, Section 5) were required by the Bureau of Public Roads on the projects affecting the Triangle (A. 175a and 176a), and no Relocation Program Plan was required for the two projects pursuant to said I.M. 80-1-68, Section 7.

However, with the exception of the Relocation Program Plan set forth in Section 7 of I.M. 80-1-68, the State submitted all other assurances required by the statute (23 U.S.C. §502) and the I.M. and its amendments on a state-wide basis and such assurances were approved by the Bureau of Public Roads (A. 150a-155a, 161a-165a). (Pl. Ex. 5, 6, 7, 8A, B, C; A. 154a, 155a, 163a and 164a).

Although no Relocation Program Plan under the provisions of Section 7 of I.M. 80-1-68 was supplied by the State, as such, in regard to the projects affecting the Triangle, the State Road Commission of West Virginia has been providing the relocation assistance and service to the displaced persons in the Triangle area (A. 370a-372a) and to the satisfaction of the officials of the Bureau of Public Roads (A. 175a-179a).

Irrespective of the lack of a formal, written relocation plan, the displacement and relocation activities of the State Road Commission of West Virginia in the Triangle area, both before and after August 23, 1968, must have also been to the apparent satisfaction of persons being displaced as there was no evidence of any sort introduced during the course of the hearing that any displaced person had not been properly relocated. One occupant of the Triangle, Mrs. Gladys Burton, although replacement housing was obtained, refused to move on advice of agents of the plaintiff herein (A. 373a-377a). One other person, Mrs. Geraldine Jordan, who rented a room, testified that she was requested to move by April 7, 1969, and that the State offered her no assistance (A. 344a-346a). It, however, developed on cross-examination that Mrs. Jordan had been advised of and was familiar with the location of the Relocation Office in the Triangle area and that no one had given her written notice to vacate or had threatened to evict her from the premises. She had occupied the premises about 4 or 5 months and had moved into the route of the interstate from the City of Institute. It further developed that the owner of the house, Mrs. Violett Nichols, had obtained replacement housing and there

were accommodations for her tenants also, but because of some personality conflict between Mrs. Jordan and a daughter of the landlady over room locations, she declined to move to the new location (A. 347a-350a).

The only other evidence of lack of relocation housing, other than studies, surveys and projections by various agencies, was the evidence of Robert Bayes, one of the plaintiffs herein, and an owner of real estate within the interstate route, who testified that he was approached by the State Road Commission two years ago, but had not been contacted since, nor had any action been taken to displace him. He has attempted to find housing (apparently to purchase) and the prices are tremendous (A. 429a-431a).

Moreover, since the hearings in the District Court, petitions have been filed requesting stays and injunctions in both the Circuit Court of Appeals and this Court, none of which have contained valid allegations of improper displacement of people or improper relocation thereof by State Respondents.

ARGUMENT

For sake of clarity the argument of State Respondents will be sub-divided into the same categories as Petitioners' argument and shall contain the same headings.

I.

THE DISPLACEMENT OF THE BLACK PETITIONERS INTO A RACIALLY DISCRIMINATORY HOUSING MARKET WITHOUT ADEQUATE GOVERNMENTAL MEASURES TO ASSURE NON-DISCRIMINATORY RELOCATION HOUSING DEPRIVES THEM OF THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT.

Petitioners' entire constitutional question is based upon the erroneous premise that the displacees are subject to private housing discrimination. State Respondents are not so vain or naive as to allege that no racial bias or prejudice exists in the City of Charleston, or to deny that racial bias or prejudice may well have been the predominant factor in the original creation of the "black ghetto of Charleston, West Virginia" (as Petitioners refer to the Triangle area), but said State Respondents do allege that any such racial discrimination as does exist does not and will not preclude the relocation of all persons involved herein on an open racial basis to adequate, safe, sanitary and decent housing.

The City of Charleston, in November, 1967, adopted an ordinance known as the Charleston Human Rights Act which, among other things, precludes all discrimination in the sale and/or rental of housing with the exception of facilities which will be partly occupied by the owner. Even this exception is limited to housing facilities of four units or under[6]. Therefore, with

[6] The entire Ordinance appears as an appendix to this brief.

the exception of housing facilities which are partially occupied by the owners, there is no racial discrimination in the housing market which would preclude the displaced persons in question from being provided relocation housing. The sole basis for such allegations of racial discrimination is contained in the testmony of one Carolyn Tillman and her supportive affidavit (Pl. Ex. 25; A. 333a-334a) to the effect that of the list of fifty dwelling units supplied to her by the State Relocation Office, only eight were below the $60.00 per month rental ceiling which she concluded was the maximum rental payable by the average income family of Triangle residents, and of these eight dwelling units, two were considered unavailable for rental by blacks. Unless these were within the exception to the Human Rights Ordinance, these two would have been available under the provisions of that Ordinance. Furthermore, in the survey of Mrs. Tillman (A. 344a) she did not consider public housing, "because people are not desirous of public housing."

There is no concrete evidence before this Court that any person has been denied replacement housing, either public or private, because of race, color, creed, national origin or otherwise.

It is submitted that proof of the existence of a racially discriminatory housing market might well make out a case of violation of the equal protection clause of the Constitution. However, mere assumptions and assertions that such discrimination exists, without proof thereof, is not sufficient to invoke the denial of equal protection safeguards of the Fourteenth Amendment.

II.

THE 1968 RELOCATION AMENDMENTS TO THE FEDERAL-AID HIGHWAY ACT AND REGULATIONS THEREUNDER GRANT RELOCATION BENEFITS TO THE TRIANGLE RESIDENTS WHICH HAVE NOT BEEN ADMINISTRATIVELY OR JUDICIALLY ACCORDED THEM.

A. The 1968 Relocation Amendments Assure Persons Not Yet Displaced As of the Date of Enactment the Right to Adequate Replacement Housing, and Pursuant Thereto Mandate Detailed Relocation Plans.

State Respondents agree that the 1968 Relocation Amendments assure persons not yet displaced as of the date of the enactment thereof the right to adequate replacement housing. This position has always been maintained by the State Respondents and has been consistently followed. Relocation assistance, service and allowances to persons displaced as required by the 1968 Relocation Amendments and the I.M.'s thereunder have been supplied by State Respondents to all persons who have been displaced by action of State Respondents. However, State Respondents do not agree that the 1968 Relocation Amendments require a detailed relocation plan for projects long since authorized and from the area of which a major portion of the persons had been removed.

As the learned District Judge said in his opinion (A. 54a):

> ". . . I am further convinced, after analyzing the statutory provisions, their legislative history, and the instructional memoranda issued pursuant thereto, that Congress could not have intended that projects authorized and approved several years prior to the enactment of the 1968

> statute were to be subject to inflexible and strict compliance therewith. The administrative agency did not give it such an interpretation, and I am of the opinion that the agency's determination had a rational basis and should not be disturbed."

Nothing within the statute itself requires the formulation and preparation of a detailed relocation plan. The statute, as such, requires only that certain satisfactory assurances be made to the Secretary before approval of any project which will cause the displacement of any person (23 U.S.C. §502). These assurances were made by State Respondents and were satisfactory to the Secretary (acting, of course, by and through his agents) (A. 164a, 176a). Petitioners' inference that the requirement of satisfactory assurances necessitates the preparation of an actual, formal, written relocation plan and submission of the same to the federal agency for approval is devoid of merit.

It was obvious to the officials of the Bureau of Public Roads, from past experience and association with relocation activities of State Respondents under the provisions of the 1962 Act, that the assurances required by the 1968 Act could be met and the assurances as given by State Respondents were thus "satisfactory" within the meaning of the statute.

Time has proven these officials to be correct in their assessment of the capabilities of State Respondents in these relocation activities. As of March 1, 1971, 9 persons remain as residents of the Triangle area within the right of way boundaries to be relocated to safe, sanitary and decent housing.

Nor does the provisions of the Memorandum entitled I.M. 80-1-68 dated September 5, 1968, and its subsequent revision dictate the mandatory preparation and approval of a relocation plan.

By Section 510 of the 1968 Relocation Amendment, the Secretary was given authority to make rules and regulations to carry out the provisions contained in Chapter 5 of Title 23, U.S.C. In compliance therewith, I.M. 80-1-68 was issued dated September 5, 1968. It is obvious to State Respondents from the cover letter attached thereto (Pet. Br. A. 17) that the same was an interim operating procedure and that after a period of operation thereunder they would be incorporated into a Policy and Procedure Memorandum.

It is further obvious to State Respondents that the assurances required by Section 5 of I.M. 80-1-68 were not required for the two projects here in question by reason of the language of Section 5(b)[7] thereof which is not subject to any other construction in that it is uncontroverted that authority to acquire right of way had been granted long before the effective date of the 1968 Relocation Amendment.

It is equally as obvious that the provisions of Section 7 of I.M. 80-1-68 (Development of Relocation Program Plan) does not apply to the two projects in question.

If great deference is given by the Courts to the interpretation given to statutes by the officers or agen-

[7] The above assurances are not required where authorization to acquire right-of-way or to commence construction has been given prior to the issuance of this memorandum. The state will pick up the sequence at whatever point it may be in the acquisition program at the time of issuance of this memorandum. I.M. 80-1-68, Section 5(b).

cy charged with its administration as this Court has held in the case of *Udall* v. *Tallman*, 380 U.S. 1 (1965), how much greater deference should be given to the interpretation of rules and regulations promulgated by the officers to carry into effect the provisions of a statute.

The fact that no relocation plan was required upon projects which were underway at the time of the effective date of the 1968 Relocation Amendments was not solely the interpretation of the Division Right of Way Officer or the Division Engineer of the West Virginia Division of the Bureau of Public Roads and it was not limited to the two projects here in question. According to the testimony of P. E. Carpenter, the Division Engineer of the Bureau of Public Roads (A. 415a-417a), preparation of the I.M. in question was begun in June, 1968, when the possibilities appeared good that the Relocation Amendment would pass the Congress. Mr. Carpenter, then Chief of Appraisal and Acquisition, Office of Right of Way and Location, assisted in preparing the basic policy, and the subject of relocation plans for going projects was discussed at meetings of the Federal Highway Administration in Washington, D. C., prior to the enactment of the actual statute, and subsequently at meetings of all the top highway officials in the United States.

The interpretation throughout has been that no formal relocation plan was required on going projects by the provision of the statute (23 U.S.C. §501, *et seq.*) and I.M. 80-1-68.

Mr. Carpenter's testimony and the above conclusion are given weight and credence by the language

of additional memorandums (Pet. Br. A. 37, 39) dated December 26, 1968, and February 12, 1969, respectively.

Petitioners, in their brief, at page 34, N. 79, quote portions of these two memorandums as support for their position that relocation plans were required. The portions quoted, read separate and apart from the remainder of the memorandum, might well be construed as supportive of Petitioners' claim. However, close study of these subsequent memorandums does not support that contention.

The first of these, dated December 26, 1968, obviously applies to projects on which authorizations to negotiate to acquire right of way and/or begin construction[8] has not yet been given and relocation plans are clearly required under I.M. 80-1-68. However, under circumstances in which the State, under its present law, could not comply with the relocation requirements, the requirements of a relocation plan were partially rescinded and only sufficient data was required for the Division Engineer to determine the advisability of proceeding with the project.

Rather than strengthening Petitioners' position that relocation plans were considered mandatory on the subject projects by the Department of Transportation, this memorandum greatly weakens the same and shows

---

[8] Counsel for Petitoners appear to have difficulty with the rather frequent use of the terminology "authorize to acquire right of way or commence construction" found in the various memorandums. There are circumstances under which federally-aided projects are constructed on right of way acquired without federal aid or owned by the State and, therefore, the first federal authorization may well be in relation to the construction aspect of the project.

that such relocation plans as prescribed by I.M. 80-1-68 were not absolutely essential to the authorization for beginning projects. Furthermore, as the State of West Virginia was able, under its laws, to comply with all requirements of the Relocation Amendments, and the two projects here in question were "going projects", this memorandum had no applicability to the subject case.

The other memorandum dated February 12, 1969, is concerned with Relocation Procedures—Going Projects. This Circular Memorandum indicates that States should undertake planning on all active projects to the extent that it is *reasonable and proper* (Emphasis Added). The memorandum recognizes that each such project involves a different set of circumstances and conditions and necessarily left additional authorizations to acquire right of way or authorize construction to the discretion of the Division Engineer based upon the information made available to him by the State.

It logically follows that if the statute and/or the I.M. 80-1-68 required a relocation plan as contended by the Petitioners herein, on the two projects in question, there was no need for the additional memorandum instructing the States to undertake such planning where reasonable and proper and leaving the extent thereof to the discretion of the Division Engineer.

With all due deference to the dissenting opinion of Judge Sobeloff (A. 72a-78a; 429 F. 2d 423) and the opinion of the panel of judges of the Fourth Circuit Court of Appeals that considered Petitioners' petition

for rehearing as Judge Sobeloff inferred it to be (A. 77a; 429 F. 2d 423, 426), State Respondents do not subscribe to the proposition that as the result of a policy directive of the Secretary of Transportation dated January 15, 1970 (Pet. Br. A. 41), and an implementing memorandum of the Federal Highway Administration dated March 27, 1970 (Amended April 10, 1970, Pet. Br. A. 43), the position of the Petitioners herein has now become the law.

The State Respondents have never contended and do not now contend that the 1968 Relocation Amendments do not apply to the projects in question. However, we do contend that by virtue of the provisions of I.M. 80-1-68(5) (b), the formal Relocation Plan required by I.M. 80-1-68(7) as a part of the "satisfactory assurances" are not required. The sole obligation of State Respondents on the two projects in question was to begin the actual physical activity of assisting persons to be displaced to be relocated into safe, sanitary and decent housing and to provide for them the various relocation allowances and payments as required by the statute and regulations. This has been done.

The memorandums of January 15, 1970, and April 10, 1970, in no way changed this procedure on the two projects in question. In fact, State Respondents are of the opinion that these memorandums, in effect, adopted the philosophy and theory of State Respondents to meet the relocation problem.

The District Court was assured that displacement would be conducted at a slow pace in order that adequate replacement housing could be found. This was done. At the time of the trial of this matter, no

authorizations for construction had been given and yet today no authorizations for construction have been given in any area in the Triangle still occupied by persons. The sole authorization for construction in the Triangle area is for piers for the bridge across Elk River and the construction touches no occupied areas of land.

Relocations are continuing under the constant scrutiny of Federal Highway Administration personnel, and when all of the residents have been adequately relocated to safe, sanitary and decent housing, then authorization for construction will be requested.

This is the identical procedure as contemplated by the memorandum of Secretary Volpe dated January 15, 1970. It provides, in part:

> "2. Construction will be authorized only upon verification that replacement housing is in place and has been made available to all affected persons."

How could such *verification* be made until actual relocation had taken place? Furthermore, if relocation has been made, the question of whether or not the replacement housing is fair housing—open to all persons, regardless of race, color, religion, sex or national origin is moot.

The implementing memorandum dated April 10, 1970 likewise precludes authorization for construction "until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the State offers him adequate replacement housing which is available for immediate occupancy".

This is exactly what State Respondents have been doing since late 1968.

What advantage or benefit could or would have been afforded the persons to be displaced by the preparation of a formal relocation plan by State Respondents? A major portion of the people to be relocated on the two projects had been moved prior to the effective date of the 1968 Relocation Amendment. The remaining ones could not be prejudiced or injured by the State's program of delaying construction until relocation had been completed.

Rather than the Petitioners' position in this case becoming the law, it appears obvious that the policy of State Respondents has now become the law through the force and effect of Federal Regulations, by virtue of the above discussed memorandums.

B. IN THE ABSENCE OF COMPLIANCE WITH THE REQUIREMENTS OF THE 1968 RELOCATION AMENDMENTS, ADMINISTRATIVE ACTION BY STATE AND FEDERAL OFFICIALS CANNOT BE UPHELD ON THE BASIS OF GENERAL ASSURANCES THAT EFFORTS ARE BEING AND WILL BE MADE TO RELOCATE PERSONS DISPLACED, AND THAT ADEQUATE RELOCATION HOUSING EXISTS.

Responding to Petitioners' assertions under the above heading, State Respondents agree that if the statute and the I.M. required a comprehensive relocation plan on the two projects in question, then the assurances, as made to the Court during the trial, would not be an adequate substitute therefor. How-

ever, it is our contention, as above set forth, that the comprehensive relocation plan was not required.

1. *Reversal Is Required Because the Procedures Mandated by Law with Respect to the Submission for Review and Approval of a Comprehensive Relocation Plan Were Not Followed.*

State Respondents do not understand the opinion of the District Court to hold that the assurances made by State Respondents and relied upon by the Federal Respondents would "substantially comply" with the requirements for a comprehensive relocation plan. The District Court said that no such plan was required on the two projects in question by virtue of the statute and the regulations. The Court further held that from the evidence adduced in the trial, the State Respondents could comply with the provisions of the 1968 Relocation Amendment and the regulations relating thereto which were applicable to the two projects in question.

2. *The District Court's Purported Finding That Relocation Housing Was Adequate Was Clearly Erroneous.*

There is nothing to substantiate Petitioners' assertion that the District Court's determination of adequate relocation housing was made without reference to standards set forth in the statute and the regulations. The standards [I.M. 80-1-68(13)] were before the Court as a part of the Instructional Memorandum and even a cursory glance at the record will reveal that the testimony was crammed with the standard of "safe, sanitary and decent". The Court's opinion (A. 55a) likewise used the terminology.

The most logical answer as to whether or not the District Court's finding as to adequate relocation housing was erroneous is the fact that relocation has, for all practical purposes, been completed.

III.

THE QUESTIONS OF RETROACTIVE APPLICATION AND APPROPRIATE REMEDY.

State Respondents are in accord with Petitioners' suggestion as to retroactive application of this Court's ruling in the event of a ruling adverse to the position of State Respondents. However, again, little constructive benefit would be obtained by the formulation of a comprehensive relocation plan for the 9 people remaining in the Triangle area. They should simply be relocated in adequate, safe, sanitary and decent housing and in all probability will have been so relocated by the time decision is rendered herein.

State Respondents are aware that there are persons who have relocated from rights of way in the State of West Virginia (including the Triangle area) without knowledge of the State Respondents and have not received moving allowances and relocation benefits to which they may be entitled. A program is presently underway to locate these persons and see that they receive all benefits due them. This program is applicable throughout the State and not just in the Triangle area.

State Respondents feel Petitioners' suggestion on locating all persons displaced from the Triangle and report their present housing condition to the Court

is too broad a requirement to comply with the provisions of the 1968 Act. Over two and one-half years have elapsed since the effective date of the 1968 Act, and the present housing condition of some of these people would not be pertinent or germane to the issue. However, it would appear, if the Court deems it necessary, that it would not be unreasonable to require State Respondents to use diligent efforts to ascertain the housing conditions to which the individual moved immediately upon displacement and act accordingly pursuant to the Court's mandate.

CONCLUSION

State Respondents are cognizant that problems exist throughout the country in regard to displacement of individuals, families, and businesses as the result of the Federal and Federally-Aided Highway Programs. They are likewise apprised of the many studies, investigations and reports in regard to the same prepared by Congressional Committees, Public and Private Agencies, and have supplied data and information for use in such reports in an endeavor to assist in arriving at equitable and just solutions to the relocation problems. State Respondents are committed to the proposition, "that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole", and has conducted its displacement and relocation activities accordingly.

State Respondents, by their counsel, have also taken cognizance of the numerous citations of court decisions in support of the various propositions proffered by

Petitioners in regard to racial discrimination; Constitutional questions, administrative procedure and judicial review thereof; and concede that the court decisions, as cited, properly state the law. However, the facts of the case at bar do not lend themselves to application of the theories of law advanced by Petitioners. Therefore, State Respondents have approached this matter from a purely factual basis, and refrained from a discussion of the law.

The sole issue in this case is whether or not the 1968 Relocation Amendments to the Federal-Aid Highway Act and the regulations promulgated by Secretary pursuant thereto require State Respondents to make certain assurances, a part of which assurances involves the preparation of a comprehensive relocation plan, for projects authorized prior to the effective date of the statute. There is no question as to the proper construction of the language in question [I.M. 80-1-68(5) (b)] and assurances are not required.

The evidence clearly shows that State Respondents could fully comply with the remaining applicable provisions of the statute, the (I.M. 80-1-68), and the supplemental memorandums in its relocation program. The passage of time has shown conclusively that it did.

There may be relocation problems within the Federal Highway Program that cry out for relief and there may be instances in which, "the Department of Transportation has shown little regard for its own policy statements as limits upon or guides to its actions" (Pet. Br. 37), but the Triangle area of the City of Charleston is not such an instance.

The relief prayed for by Petitioners should be denied.

Respectfully submitted,

STANLEY E. PREISER,
L. ALVIN HUNT
P. O. Box 2506
1012 Kanawha Boulevard, East
Charleston, West Virginia 25329
Attorneys for State Respondents

PREISER, GREENE, HUNT & WILSON
P. O. Box 2506
1012 Kanawha Boulevard, East
Charleston, West Virginia 25329
Of Counsel

AN ORDINANCE repealing Article 75, Part 9, Streets and Public Services Law, Code of the City of Charleston, 1957, known as Ordinance 919—Amended, and enacting Ordinance Article 75, Part 9, Streets and Public Services Law, Code of the City of Charleston, 1957, relating to establishment of the Charleston Human Rights Commission, prohibiting discrimination in employment, housing and public accommodations and providing penalties for violations:

Be it ordained by the Council of the City of Charleston;

That Article 75, Part 9, Streets and Public Services Law, Code of the City of Charleston, 1957, known as Ordinance 919—Amended, adopted by Council on October 2, 1967, be repealed and that Article 75, Part 9, Streets and Public Services Law, Code of the City of Charleston, 1957, as hereinafter provided is hereby enacted to read as follows:

Section 1. *This ordinance shall be known and may be cited and referred to as The Charleston Human Rights Act.*

Section 2. *Policy Declared.*—It is the public policy of the City of Charleston to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing and real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin or ancestry.

The denial of these rights to properly qualified persons by reason of the race, religion, color, national origin or ancestry is contrary to the principles of freedom and equal opportunity and is destructive to a free and democratic society.

Section 3. *Definitions.*—When used in this ordinance:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,

trustees in bankruptcy, receivers, and other organized groups of persons.

(b) The term "commission" means the Charleston Human Rights Commission.

(c) The term "director" means the executive director of the Charleston Human Rights Commission.

(d) The term "employer" includes the city, or any political or civil subdivision thereof, and any person employing five (5) or more persons within the City, provided that such term shall not be taken, understood or construed to include a private club.

(e) The term "employee" shall not include any individual employed by his parents, spouse, or child, or in the domestic service of any person.

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees.

(h) The term "discriminate" or "discrimination" means to exclude from or fail or refuse to extend to a person equal opportunities because of race, religion, color, national origin or ancestry, and includes to separate or segregate.

(i) The term "unlawful discriminatory practices" includes only those practices specified in Section 9 of this ordinance.

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the City, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommodations to the general public, but shall not include any accommodations which are in their nature distinctly private.

(k) The term "housing accommodations" means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons, but does not include (A) the rental of a dwelling, or a portion thereof, containing accommodations for two, three or four families, one of which accommodations is maintained by the owner at the time of rental as the household of his family or (B) the rental of a room or rooms in a single family private dwelling or room in any apartment sublet by the owner or tenant of said apartment to another person or persons by the owner or occupant of such accommodation in which he or members of his family reside.

(l) The term "real property" includes real estate, lands, leaseholds, commercial or industrial buildings, and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended.

(m) The term "real estate broker" includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys, or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate or negotiates, offers, or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a private or public competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts

thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

(n) The term "real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrances upon or transfer of real estate, to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

(o) The term "purchaser" includes any occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer.

(p) The term "owner" shall include the owner, lessee, sublessee, assignee, manager, agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation or real property within the City of Charleston or any agent of any of these.

(q) The term "complainant" means any individual charging on his own behalf of have been personally aggrieved by discriminatory practices.

Section 4. *Human Rights Commission Created; Status, Powers and Objects.*—A Charleston human rights commission is hereby created and established in the city government. The commission shall have the powers and authority and shall perform the functions and services as in this ordinance prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual under-

standing and respect among all racial, religious and ethnic groups within the city and shall strive to eliminate all discrimination in employment, places of public accommodations and in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin or ancestry.

Unless the context clearly requires another meaning or reference, the word "commission" as used in this ordinance shall be construed to mean and to refer to the Charleston human rights commission.

Section 5. *Commission Composition; Terms; Oath of Office; Expenses.*—The commission shall be composed of nine members, all residents and citizens of the City of Charleston, and broadly representative of the several racial, religious and ethnic groups residing within the City, to be appointed by the Mayor by and with the advice and consent of the City Council.

Not more than five members of the commission shall be members of the same political party.

Upon passage of this ordinance, members of the commission shall be appointed to terms of three years commencing on the first day of July of the year of their appointments, except that the nine members first appointed hereunder shall be appointed for terms of from one to three years, respectively, retroactively to the proceeding July 1st so that the terms of three members of the commission will expire on the thirtieth day of June of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment.

No member of the commission shall receive any salary or compensation for his services as such, but each member shall be reimbursed for any reasonable and necessary travel expenses incurred in performance of commission services.

Section 6. *Commission Organization and Personnel.*—As soon as practical after the creation of the commission, the Mayor

shall call a meeting thereof to be convened at the City Building. The commission shall at the meeting organize by electing one of its members as chairman of the commission and one as vice-chairman thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization. Annually thereafter, as soon as practical after the first day of July, the commission shall elect a chairman and vice-chairman from its membership and such other officers as may be found necessary and proper for its effective organization.

The commission shall, subject to the approval of the Mayor, select an executive director, by and with the advice and consent of the City Council, who shall serve at the will and pleasure of the commission and the Mayor. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He shall be selected with particular reference to his training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission.

The commission shall equip and maintain its offices at the City Building and shall hold its annual organizational meeting there. The commission may hold other meetings during the year at such times and places within the City as may be found necessary. Any five (5) members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

The commission shall prepare and submit an annual budget

to the City Council for approval. This budget, however, shall be predicated upon the appropriation annually made by the City Council for expenditure by the commission.

Section 7. *Assistance to Commission; Legal Services.*—The commission may call upon other officers, departments and agencies of the city government to assist in its hearings, programs and projects. The City Solicitor shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

Section 8. *Commission Powers, Functions; Services.*—The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this City;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws for all groups and peoples;

(c) To receive, investigate, and pass upon complaints alleging discrimination in employment, places of public accommodations or in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin or ancestry, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the City relating to employment, places of public accommodations, and housing and real property;

(d) To hold and conduct public and private hearings on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment, places of public accommodations or in the sale, purchase, lease, rental and financing of housing accommodations

or real property, and during the investigation of any formal complaint before the commission relating thereto, to:

(1) *Issue subpoenas and subpoenas duces tecum* upon the concurrence of at least five (5) members of the commission, adminster oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

3. Delegate to a panel of three (3) commission members appointed by the chairman, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and action growing out of or upon any such hearings shall be reserved for determination by the commission;

(4) To enter into conciliation agreements;

(5) To apply to the Circuit Court of Kanawha County for enforcement of any conciliation agreement by seeking specific performance of such agreement;

(6) To issue cease and desist orders against any person found after a public hearing to have violated the provisions of this ordinance, or the rules and regulations of the commission;

(7) To apply to the Circuit Court of Kanawha County for an order enforcing any lawful cease and desist order issued by the commission.

(e) To recommend to the Mayor and Council, policies, procedures, practices and legislation in matters and questions affecting human rights.

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this ordinance.

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the Mayor on or before the first day of December next thereafter.

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this ordinance including the promulgation of rules and regulations implementing the powers and authority hereby vested in the commission.

(i) To create such advisory agencies and conciliation councils, within the City, as in its judgment will aid in effectuating the purposes of this ordinance, to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this City, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate City agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the City.

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section, and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section.

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination provided that the identity of the parties shall not be disclosed.

Section 9. *Unlawful Discriminatory Practices.*—It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States

or the State of West Virginia or the City of Charleston or any agencies or political subdivisions of said United States, State of West Virginia, or City of Charleston;

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is able and competent to perform the services required.

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to (1) elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin or ancestry of any applicant for employment or membership; (2) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin or ancestry; (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin or ancestry.

(c) For any labor organization because of the race, religion, color, national origin or ancestry of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(1) Select individuals for an apprentice training program registered with the City of Charleston on any basis other than their qualifications as determined by objective criteria which permit review;

(2) Discriminate against any individual with regard to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based on a bona fide occupational qualification.

(e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin or ancestry.

(f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to:

(1) Refuse, withhold from, or deny to any individual because of his race, religion, color, national origin or ancestry, either directly or indirectly, any of the accommodations, advantages, facilities, privileges, or services of such place of public accommodation;

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin or ancestry, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin or ancestry is unwelcome, objectionable, not acceptable, undesired or not solicited;

(g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any housing accommodations or real property or part or portion thereof, or any agent or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or persons any housing accommodations or real property or part or portion thereof or represent that such housing accommodations are not available for inspection when in fact they are so available, provided, of course, that the request for inspection is made at a reasonable time, and that the inspection be made at a reasonable time, because of race, religion, color, national origin or ancestry of such person or persons. Nothing in this ordinance shall be deemed to permit any rentals or occupancy otherwise prohibited by law;

(2) To discriminate against any person or persons because of the race, religion, color, national origin or ancestry of such person or persons in the terms, conditions, or privileges of sale, rental or lease of any housing accommodations or real property or part or portion thereof or in the furnishing of facilities or services in connection therewith; or

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment, or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any housing accommodations or real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religion, color, national origin or ancestry, or any intent to make any such limitation, specification, or discrimination, and the production of any statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person.

(h) For any person or financial institution or lender to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodations or real property or part or portion thereof or any agent or employee thereof:

(1) To discriminate against any person or group of persons because of the race, religion, color, national origin or ancestry of such person or group of persons or of the prospective occupants or tenants of such housing accommodations or real property or part or portion thereof, in the granting, withholding, extending, modifying, or renewing, or in the fixing of the rates, terms, conditions, or provisions of any such financial assistance or in the extension of services in connection therewith; or

(2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin or ancestry or any intent to make any such limitation, specification, or discrimination.

(i) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution to:

(1) Engage in any form of threats or reprisals, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss or to aid, abet, incite, compel, or coerce any person to engage in any of the unlawful discriminatory practices defined in this ordinance;

(2) Wilfully obstruct or prevent any person from complying with the provisions of this ordinance, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this ordinance;

(3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this ordinance or because he has filed a complaint, testified, or assisted in any proceeding under this ordinance.

Section 10. *Procedures.*—Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall

make, sign, and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, owner or real estate broker or agency, financial institution or lender, or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative or the Mayor, or the City Solicitor may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this ordinance shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken, held, or made by the commission against such employer. Any complaint filed pursuant to this ordinance must be filed within sixty (60) days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten (10) days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors; Provided, that the commission may publish the facts in the case of any complaint which

has been dismissed, and the terms of the conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker or agency, financial institution or lender, named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission in Charleston at a time and place to be specified in such notice: Provided, however, that such written notice be served at least thirty (30) days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as provided in the immediately preceding provision all of the pertinent provisions of Article 5, Chapter 29A of the Code of West Virginia shall apply to and govern the hearing and the administrative procedure in connection with and following such hearings with like effect as if the provisions of said Article 5, Chapter 29A were set forth in extenso in this section.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this ordinance, the commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organiza-

tion or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental, or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this ordinance, as in the judgment of the commission, will effectuate the purposes of this ordinance, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in Section 3, Article 5, Chapter 29A of the Code of West Virginia.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of its order shall be delivered in all cases by the commission to the complainant, to the respondent, to the City Solicitor, and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in Section 11 of this ordinance.

Any person against whom a cease and desist order has been served by the commission shall have a full appeal and complete right of review as a matter of right by the Circuit Court of Kanawha County, and from that Court to the Supreme Court of Appeals of West Virginia in accordance with the laws of the State of West Virginia, provided, however, that any provision of Chapter 29A supercede this provision in event of any conflict thereto.

Section 11. *Enforcement of Cease and Desist Order.*—In the event any person shall fail to obey a lawful cease and desist order of the commission, the commission may seek an order of the Circuit Court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the Circuit Court of Kanawha County. Such proceedings shall be initiated by the filing of a petition in such Court, together with a written transcript of the entire record upon

the hearing before the commission. Notice of the filing of such petition, together with a copy thereof shall be served upon respondent in the manner provided by law for the service of summons in civil actions. No hearing shall be held upon such petition within twenty (20) days of the date of service thereof on the respondent.

The Court may grant such temporary relief or restraining order as it deems just and proper and shall make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the commission. All such proceedings shall be heard and determined by the Court. The jurisdiction of the Circuit Court shall be exclusive and its judgment and order shall be final subject to review by the Supreme Court of Appeals.

Section 12. *Exclusiveness of Remedy.*—The procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this ordinance, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this ordinance and the interpretation of a similar provision contained in any state law, the interpretation of the provision of the state law shall apply to this municipal ordinance.

Section 13. *Penalty.*—Any person who shall wilfully resist, prevent, impede or interfere with the commission, its members, agents or agencies in the performance of duties pursuant to this ordinance, or shall wilfully violate a final order of the commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment in the discretion of the court, but seeking judicial review of an order shall not be deemed to be such wilfull conduct.

Section 14. This ordinance shall in no way be construed to deny to any person his rights as they exist at common law or under the laws of the State of West Virginia, for redress or damages, in the event of wilfull and malicious wrongs or harassment committed upon him.

Section 15. *Construction; Severability.*—The provisions of this ordinance shall be liberally construed to accomplish its objectives and purposes. If any provision of this ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.